

Message Text

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ACTION EUR-25

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FM USMISSION BERLIN

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AMEMBASSY BONN IMMEDIATE

INFO AMEMBASSY LONDON

AMEMBASSY MOSCOW

AMEMBASSY PARIS

C O N F I D E N T I A L BERLIN 0331

E.O. 11652: GDS

TAGS: PGOV, WB, GE, WB

SUBJECT: FRG CONSTITUTIONAL COURT REQUEST FOR INGRID BRUECKMANN
DOCUMENTS

REF: BERLIN 0307

BERLIN 1432 (1973)

1. SENATOR FOR JUSTICE KORBER AND SENAT CHANCELLERY
DIRECTOR HERZ REQUESTED MEETING WITH CHAIRMAN SENAT
LIAISON OFFICER FEBRUARY 21 TO DISCUSS KARLSRUHE REQUEST FOR
INGRID BRUECKMANN CASE DOCUMENTS. APPARENTLY KARLSRUHE
HAD BEEN NEEDLING KORBER FOR DOCUMENTS AND HE BEGAN
DISCUSSION BY SAYING THAT HE COULD NOT UNDERSTAND
WHY ALLIES WERE RELUCTANT TO PERMIT HIM TO FORWARD
THEM TO KARLSRUHE. HE SAID IT WAS NORMAL PROCEDURE
FOR BERLIN COURTS TO COOPERATE WITH KARLSRUHE BY
PROVIDING DOCUMENTS, AND HAD KARLSRUHE MADE REQUEST
TO BERLIN KAMMERGERICHT DIRECTLY, DOCUMENTS WOULD
PROBABLY HAVE BEEN SENT WITHOUT ANY BODY KNOWING ABOUT
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IT. KARLSRUHE JUDGE CALLED HIS OFFICE, BECAUSE OF

POLITICAL RAMIFICATIONS OF BRUECKMANN CASE, STILL PENDING BEFORE HUMAN RIGHTS COURT IN STRASBOURG. THIS WAS ALSO REASON KORBER CALLED FEDERAL JUSTICE MINISTRY. KORBER REMARKED THAT NO POWER COULD STOP KARLSRUHE FROM MAKING DECISION BUT ALLIES COULD STATE THAT KARLSRUHE DECISION DID NOT APPLY TO BERLIN. IT WOULD BE POLITICAL SCANDAL, HE ADDED, IF IT BECAME PUBLIC KNOWLEDGE THAT BERLIN COURTS COOPERATED MORE WITH GDR COURTS THAN WITH FRG CONSTITUTIONAL COURT IN KARLSRUHE. HERZ REMARKED AT THIS POINT (AND KORBER CONCURRED) THAT REFUSAL TO PROVIDE DOCUMENTS MIGHT ALSO HAVE ADVERSE EFFECT ON KARLSRUHE JUDGE'S ATTITUDE.

2. KORBER SAID HE WOULD BE HAPPY TO SEND DOCUMENTS TO KARLSRUHE ON OWN AUTHORITY AND HERZ REQUESTED ALLIES BY COB FEBRUARY 22 EITHER TO GIVE ORAL APPROVAL TO SEND DOCUMENTS OR ISSUE BK/L FORBIDDING SENAT TO FORWARD THEM.

3. COMMENT: WE INTEND TO INFORM HERZ FEBRUARY 22 DEADLINE IS UNREALISTIC. WE BELIEVE, HOWEVER, THAT THREE-POINT APPROACH SET FORTH REF A OFFERS WAY OUT OF PROBLEM. KARLSRUHE COURT SHOULD BE ABLE TO DETERMINE ITS LACK OF JURISDICTION FROM REVIEW OF DOCUMENTS WHICH ARE AVAILABLE TO PUBLIC SUCH AS ALL JUDGEMENTS AND MOTIONS FILED BY PARTIES. IF SENAT OR BERLIN COURT PASSES THESE INFORMALLY TO KARLSRUHE ALONG WITH REMINDER OF RELEVANT ALLIED LEGISLATION, AND IN ACCORDANCE WITH ALLIED INSTRUCTIONS RATHER THAN PURSUANT TO FORMAL REQUEST OR ORDER, IT IS DIFFICULT TO SEE HOW IT COULD BE CHARGED THAT CONSTITUTIONAL COURT WAS EXERCISING ANY AUTHORITY OVER BERLIN. WE PROPOSE TO EXPLORE SUBSEQUENTLY WITH SENAT WHAT SORT OF INFORMAL COOPERATION BERLIN COURTS MAY HAVE BEEN GIVING KARLSRUHE UP TO NOW IN ROUTINE CASES.

4. ACTION REQUESTED: EMBASSY COORDINATE AGREED ALLIED POSITION ALONG LINES OF REF A FOR TRANSMITTAL TO SENAT AS SOON AS POSSIBLE.KLEIN

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